

REMARKS

The above amendments and these remarks are responsive to the Office action dated August 2, 2005. As an initial matter, Applicants want to thank the Examiner for his time and participation in the telephonic interview with Applicants' undersigned attorney on October 28, 2005. The substance of this interview is incorporated in Applicants' following remarks.

Prior to entry of the above amendments, claims 1-9 and 11-25 were pending in the application. In the latest, non-final, Office action, the Examiner rejected claims 1-9 and 11-25 under the judicially created doctrine of double patenting, rejected claims 1 and 4 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,102,937 to Cramer, and further rejected claims 1-9 and 11-25 under 35 U.S.C. §103(a) as being obvious over various combinations of the cited references. By the above amendments, claim 1 is amended, and claim 20 is cancelled without prejudice. In view of the foregoing amendments, and the following remarks, Applicants respectfully request reconsideration of the application under 37 C.F.R. § 1.111.

Double Patenting Rejections

In the Office action, all presently pending claims were rejected under the doctrine of obviousness-type double patenting over Applicants' U.S. Patent No. 6,503,582. Applicants respectfully traverse and request reconsideration of the obviousness-type double patenting rejection. The presently pending claims are all composition claims. During the prosecution of the application from which the '582 patent issued, restriction was made

between claims directed to the compositions disclosed in the application and the articles and methods disclosed in the application. As set forth in the Supplemental Notice of Allowance issued on October 1, 1999 in the parent application (Serial No. 08/914,438), restriction was made between original claims 1-19, drawn to a composition classified in class 521, subclass 59, and to claims 20-44, drawn to an article and a method classified in class 446, subclass 320. During the prosecution of the parent application, election was made to pursue the article and method claims, and the composition claims (claims 1-19) were accordingly cancelled without prejudice. The present application was filed with the composition claims that were cancelled without prejudice from the parent application. Accordingly, Applicants request reconsideration and withdrawal of the obviousness-type double patenting rejection.

Rejections under 35 USC § 102(e)

Claims 1 and 4 were rejected under 35 U.S.C. § 102(e) as being anticipated by Cramer (U.S. Patent No. 6,102,937). Applicants have studied the cited reference and respectfully traverse the rejections. However, and as discussed in the interview, Applicants are willing to make the clarifying amendment to claim 1 to more particularly recite that each of the gum, gelatin, superabsorbent polymer, and binder of the absorbent composition are granular. Applicants request reconsideration of these rejections in view of the amendments to claim 1, and the following remarks discussed during the interview with the Examiner. Amended Claim 1 is presented below for the Examiner's convenience:

1. (Currently Amended) An absorbent composition for use in a children's amusement device, the composition consisting essentially of a granular mixture comprising a granular superabsorbent polymer, a granular gum, granular gelatin and a granular binder.

Applicants assert that Cramer does not anticipate amended claim 1, or dependent claim 4.

Cramer discloses a thermal neck wrap comprising a plurality of individual heat cells. The heat cells contain an exothermic composition, which, as discussed at column 8, line 28, to column 9, line 65, may be composed of one or more exothermic components in combination with known additives. Column 9, lines 18-65, lists a variety of over 85 additives which could be added to the exothermic material of the disclosed heat cells.

While Applicants acknowledge that the extensive list of additives includes a superabsorbent polymer, a gum, a gelatin, and binder materials, Applicants assert that Cramer fails to even suggest a composition including each of these four additives. Moreover, Cramer does not include even a single motivation to pluck the superabsorbent polymer, the gum, the gelatin, and the binder from the extensive list of additives and create the composition of amended claim 1. Cramer's disclosure of over 85 possible additives is overly broad and fails to enable one to form the compound for use in a children's amusement device recited in amended claim 1. As Cramer fails to disclose, or even suggest, the composition of amended claim 1, Applicants request that the rejection of claims 1 and 4 under 35 U.S.C. § 102(e) be withdrawn.

Rejections under 35 USC § 103(a)

Claims 1-9 and 11-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cordova (U.S. Patent No. 5,990,205) or Bowles (U.S. Patent No. 5,333,405) in view of Levy (U.S. Patent No. 5,698,210) or Young (U.S. Patent No. 5,432,000), and in further view of Gebhard (U.S. Patent No. 5,612,397) and Hughes (U.S. Patent No. 4,859,242).

As amended, claim 1 recites an essentially granular composition for use in a children's device which specifically includes a granular superabsorbent polymer, a granular gum, a granular gelatin, and a granular binder. As discussed in more detail in the specification at page 16, lines 10-18, during use the granular composition is deposited, or spread, onto the base of a play structure. With the addition of fluid, the absorbent composition expands upwardly to fill the shape of the play structure. The play value of the claimed composition is that the essentially granular material may magically grow, shine, and, appear "life-like" upon the addition of fluid. This is discussed in more detail at page 17, lines 11-18, of Applicants' specification.

Applicants agree with the Examiner that Cordova discloses the use of a gum, a gelatin, a binder, a colorant, reflective metal particles and a preservative in an elastic molding material. However, the composite material disclosed in Cordova is a cohesive play molding plastic. As discussed at column 5, line 44, to column 6, line 4, the base material of Cordova is a liquid solution of polyvinyl alcohol dissolved in water (lines 46-47), to which glycerin, gum, and propylene glycol are added (lines 62-65). The final mixture is a nondrying plastic moldable composition (column 7, lines 45-46), which

has a high degree of elasticity, or bounce (column 7, lines 56-58). The material specifically taught in Cordova is a molding plastic. Cordova does not teach or suggest a granular composition consisting of granular subcomponents either alone, or in combination with any of the other cited references.

Perhaps more importantly, Cordova specifically teaches away from such a granular composition. The essentially granular composition of claim 1 would be inoperable as an elastic molding plastic. As Cordova teaches an elastic, knead-able, molding play composition, Cordova teaches away from forming any essentially granular absorbent composition, including the granular composition recited in claim 1.

Bowles also fails to teach or suggest the essentially granular composition recited in amended claim 1. Bowles discloses a fishing lure that includes microencapsulated liquid fish attractants. Applicants agree with the Examiner that Bowles discloses a composite material that includes a binder, a gum, and a gelatin. The composite material of Bowles is specifically stated as being capable of forming a "microcapsule solid wall material by coacervation, permitting the incorporation of liquid fish attractant." See column 6, lines 65-68. Further, at column 7, lines 16-26, Bowles states that the binder component permits the composite to remain "stable in a tacky, viscous state" until molded onto the fishing lure. As discussed at column 7, line 46, to column 8, line 50, the Bowles composite material is prepared by forming a polymer solution of gelatin and water (see column, 7 lines 55-61) which is subsequently chemically hardened. Thus, the gelatin is first included in a liquid solution, and is then included in a hardened composite material capable of encapsulating a liquid fish repellent.

The encapsulating material of Bowles teaches away from forming the essentially granular absorbent composition of claim 1. Even an essentially granular composition would be inoperable as a composite material to encapsulate fish attractants, and to, at least in part, retain the fish attractant onto a fishing lure. Any conceivable combination involving Bowles to create the essentially granular composition of claim 1 would be incapable of being fixedly positioned on a plastic lure.

Thus, neither of the Cordova or Bowles primary references provide any teaching or suggestion to be combined with any other references of record to form the granular composition of independent claim 1, and further, both Cordova and Bowles teach away from such a granular composition. For at least the above reasons, Applicants submit that amended claim 1 patently distinguishes each of the suggested combinations including Cordova or Bowles. Accordingly, Applicants request withdrawal of the rejections of claim 1 and dependent claims 2-9, 11-19, and 21-25.

Applicants further submit that none of the secondary references, Levy, Young, Gebhard, or Hughes, teach or suggest a combination with either primary references Cordova or Bowles which would result in the essentially granular composition of claim 1. Levy discloses a composition capable of incorporating, and gradually releasing, bioactive agents to a water column (Levy column 6, lines 5-9), Young discloses a composition including a superabsorbent polymer and a binder which may be adhered to fibers (Young column 11, lines 3-7), Gebhard discloses a mixture including glitter that is added to, and suspended in, an aqueous binder to create a glossy composition capable of being applied to clothing (Gebhard column 7, lines 21-35), and Hughes discloses a dye composition of

color agents and glitter (Hughes column 2, lines 19-36). Each of these secondary references fails to provide any teaching or suggestion to motivate one skilled in the art to form combinations with primary references Cordova or Bowles which would result in the essentially granular absorbent composition of amended claim 1. Accordingly, Applicants assert that amended claim 1 and dependent claims 2-9, 11-19 and 21-25 patently distinguish all references of record.


Although seemingly moot in view of the above discussion, Applicants also submit that primary reference Bowles, and secondary references Levy, Young, Gebhard, and Hughes are non-analogous art to the present application. For these references to be analogous prior art they must either be from the same field of endeavor as Applicants' invention, or reasonably pertinent to the particular problem to be solved. See, e.g., Wang Laboratories, Inc. v. Toshiba Corp., 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993), (memory for industrial computers not analogous art to memory for personal computers). As discussed briefly above, neither of these conditions are met. The present application is directed to children's toys. A person of reasonable skill in the art of creating children's toys would not be reasonably expected to combine references from the fishing, water-treatment, fabric treatment, or pigment dyeing industries. Thus, for at least this additional reason, Applicants respectfully request that the claim rejections under 35 U.S.C. § 103(a) be withdrawn so that the present application may proceed to allowance.

With the entry of the above amendments, and for the reasons stated, Applicants submit that all of the issues raised in the Office action have been addressed. If the

Examiner has any questions or if there are any remaining issues, Applicants' undersigned attorney may be reached at the number listed below. Similarly, if the Examiner believes that another telephonic interview would be helpful to advance prosecution of the application, the Examiner is invited to contact Applicants' undersigned attorney at the number listed below.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

A handwritten signature in black ink, appearing to read 'David S. D'Ascenzo', is written over a horizontal line.

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